

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DOUGLAS E. BAKER and VERNELL F.  
BAKER, husband and wife; and HARD  
ROCK TRUCKING, INC., a Washington  
state corporation,

Plaintiff,

v.

CLALLAM COUNTY, a political  
subdivision of the State of Washington;  
JEFFERSON COUNTY, a political  
subdivision of the State of Washington;  
JOHN PRENTISS, Clallam County  
Prosecutor; FRED DEFRANG, Former  
Clallam County Undersheriff; RON  
CAMRON, Sheriff of Clallam County;  
JUELIE DALZELL, Jefferson County  
Prosecutor,

Defendant.

Case No. C08-5147RBL

ORDER GRANTING DEFENDANTS'  
MOTION TO STRIKE THOMAS  
BACKE'S DESIGNATION AS EXPERT  
WITNESS

THIS MATTER is before the Court on Defendants' Motion to Strike Plaintiffs' designation of Thomas Backe as an expert witness [Dkt. #33]. For the reasons set forth below, Defendants' motion is GRANTED.

On August 19, 2008, Plaintiffs identified Mr. Thomas Backe in their initial disclosures as an appraiser who would testify to the value of certain property at issue in this matter. Dec. of Mack, Ex. 1. This initial disclosure did not mention Plaintiffs' intent to use Mr. Backe as an expert witness. Plaintiffs did not submit any other information establishing Mr. Backe's qualifications as an expert as required

1 under FRCP 26(a)(2) at that time.

2 The deadline for disclosure of expert testimony was set for March 18, 2009 [Dkt. #24]. On March  
3 19, 2009 Defendants received a letter from Mr. Backe demanding that he be paid as an expert witness<sup>1</sup>.  
4 Dec. of Mack, Ex. 3. There was no accompanying written report as required under FRCP 26(a)(2)(B), nor  
5 was the disclosure made by Plaintiffs' counsel within the deadline established by the Court's order.  
6

7 Five days after the disclosure deadline, on March 23, 2009, Plaintiffs' served expert witness  
8 disclosures on Defendants. Dec. of Mack, Ex. 6. Mr. Backe was the only witness identified in the tardy  
9 expert witness disclosure.  
10

11 Defendants filed this motion on March 30, 2009, requesting that Mr. Backe be designated as an  
12 ordinary fact witness for purposes of his deposition<sup>2</sup>. Plaintiffs' response to that motion was due on April  
13 13, 2009. Local Rule CR 7(d)(3). Plaintiffs failed to file a response or a request for an extension of time.  
14

15 Because Plaintiffs' disclosure of Mr. Backe as an expert witness occurred after the disclosure  
16 deadline in violation of FRCP 26(a)(2)(B), and because Plaintiffs failed to timely respond to Defendants'  
17 motion, the motion to strike Mr. Backe's expert witness designation is hereby GRANTED.

18 IT IS SO ORDERED.  
19  
20  
21

22 Dated this 24<sup>th</sup> day of April, 2009.

23   
24 RONALD B. LEIGHTON  
25 United States District Court Judge  
26

27 <sup>1</sup>As an ordinary fact witness, Mr. Back would receive only \$42.75. As an expert witness, Mr. Back was requesting a total  
28 of \$400.00 (or \$100.00 an hour). Dec. of Mack, Ex. 3.

<sup>2</sup>It is unclear whether Mr. Backe will be called as a witness at trial.